REMARKS

This substitute 312 Amendment is being filed to replace the first 312 Amendment filed on the same day (May 31, 2007). The listing of claims in the first 312 Amendment omitted the Examiner's amendment to the claims agreed on May 10, 2007. The current listing of claims in this substitute 312 Amendment correctly lists the claims in form for Allowance.

The applicants thank the Examiner for the telephone conference on May 29, 2007 where we discussed the request for a substitute declaration in the Notice of Allowance dated May 16, 2007. As suggested by the Examiner, we are filing this 312 Amendment requesting that the Examiner withdraw the requirement for a substitute declaration. It is respectfully submitted that the deficiency within the declaration is minor and a new declaration is unnecessary. Instead, the applicants submit a waiver of the deficiency would be the proper course of action. Otherwise, no amendments to the claims or specification are made in this 312 Amendment.

If a declaration or oath has a minor deficiency and its body corrects the deficiency and the circumstances show that it is inadvertent, an examiner with full signatory authority may waive the deficiency. *In re Searles*, 422 F.2d 431, 437, 164 USPQ 623, 628 (CCPA 1970). The error was minor because the statement still referred to the need to disclose information according to Title 37, Code of Federal Regulations § 1.56(a). The applicants simply failed to update the declaration in accordance with the revision in the Code of Federal Regulations dating to 1992. The statements appropriateness as a pre-1992 declaration also shows it was inadvertent and not an attempt to evade the purpose of the statement.

Further, the error in question is an honest one, which the applicants are not alone in making. They are not the first to mistakenly use "examination" when citing to § 1.56(a) after its revision in 1992. In 1996, the United States Court of Appeals for the Federal Circuit cited to § 1.56(a) and used the word "examination" rather than "patentability" as well. See Critikon, Inc. v. Becton Dickinson Vascular Access, Inc., 120 F.2d 1253, 1256, 43 USPQ2d 1666, 1668 (Fed. Cir. 1997), *cert denied*, 523 U.S. 1701 (1998).

Additionally, the declaration's deficiency can be shown to be inadvertent because "examination" is a broader term than "patentability." The applicants contend the word "examination" discloses a greater scope of information because it is used with a broad and encompassing meaning, rather than a narrow and limiting meaning. Information material to the "patentability" of the application is included within information material to its "examination." It is therefore submitted that the issue at point is one of semantics rather than substance.

Lastly, the applicants' request a waiver because of the hardship required in pertaining a particular signature for a substitute declaration. One of the inventors needed to sign a substitute declaration no longer works at the company and instead works for a competitor, making the request for a substitute declaration difficult.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Northridge, California, telephone number (818) 576-4110, to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Dated: 05/31/07

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